

IC 36-7-11

Chapter 11. Historic Preservation Generally

IC 36-7-11-1

Application of chapter

Sec. 1. This chapter applies to all units except:

- (1) counties having a consolidated city;
- (2) municipalities in counties having a consolidated city; and
- (3) townships.

As added by Acts 1981, P.L.309, SEC.30.

IC 36-7-11-1.5

"Commission" defined

Sec. 1.5. As used in this chapter, "commission" refers to a historic preservation commission established through the adoption of an ordinance under section 4 of this chapter.

As added by P.L.227-1997, SEC.1.

IC 36-7-11-2

Continuation of existing historical preservation commissions; new commissions; commissions for the preservation of historic street area

Sec. 2. (a) If before July 1, 1977, a unit established by ordinance a commission for the purpose of historic preservation, that commission may continue to operate, regardless of whether that ordinance is subsequently amended or is consistent with this chapter. If the unit wants to operate a historic preservation commission under this chapter, it must adopt an ordinance under section 4 of this chapter, and this chapter then provides the exclusive method for operation of a historic preservation agency in the unit.

(b) If a unit did not establish a commission for the purpose of historic preservation before July 1, 1977, this chapter provides the exclusive method for operation of a historic preservation agency in the unit.

(c) Subsections (a) and (b) do not limit the power of a municipality to establish a commission for the preservation of a historic street area under IC 36-7-11.3.

As added by Acts 1981, P.L.309, SEC.30. Amended by Acts 1982, P.L.77, SEC.3; P.L.1-1995, SEC.80; P.L.227-1997, SEC.2.

IC 36-7-11-3

Legislative intent; conflicts between zoning districts and historic districts

Sec. 3. The historic district regulation provided in this chapter is intended to preserve and protect the historic or architecturally worthy buildings, structures, sites, monuments, streetscapes, squares, and neighborhoods of the historic districts. Zoning districts lying within the boundaries of the historic district are subject to the regulations for both the zoning district and the historic district. If there is conflict between the requirements of the zoning district and the requirements of the

historic district, the more restrictive requirements apply.
As added by Acts 1981, P.L.309, SEC.30.

IC 36-7-11-4

Commission; establishment

Sec. 4. (a) A unit may establish, by ordinance, a historic preservation commission with an official name designated in the ordinance. The commission must have not less than three (3) nor more than nine (9) voting members, as designated by the ordinance. The voting members shall be appointed by the executive of the unit, subject to the approval of the legislative body. Voting members shall each serve for a term of three (3) years. However, the terms of the original voting members may be for one (1) year, two (2) years, or three (3) years in order for the terms to be staggered, as provided by the ordinance. A vacancy shall be filled for the duration of the term. In the case of a commission with jurisdiction in a city having a population of more than one hundred five thousand (105,000) but less than one hundred twenty thousand (120,000), the commission must after June 30, 2001, include as a voting member the superintendent of the largest school corporation in the city.

(b) The ordinance may provide qualifications for members of the commission, but members must be residents of the unit who are interested in the preservation and development of historic areas. The members of the commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. The ordinance may also provide for the appointment of advisory members that the legislative body considers appropriate.

(c) The ordinance may:

- (1) designate an officer or employee of the unit to act as administrator;
- (2) permit the commission to appoint an administrator who shall serve without compensation except reasonable expenses incurred in the performance of the administrator's duties; or
- (3) provide that the commission act without the services of an administrator.

(d) Members of the commission shall serve without compensation except for reasonable expenses incurred in the performance of their duties.

(e) The commission shall elect from its membership a chairman and vice chairman, who shall serve for one (1) year and may be reelected.

(f) The commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings. All meetings of the commission must be open to the public, and a public record of the commission's resolutions, proceedings, and actions must be kept. If the commission has an administrator, the administrator shall act as the commission's secretary, otherwise, the commission shall elect a secretary from its membership.

(g) The commission shall hold regular meetings, at least monthly,

except when it has no business pending.

(h) A decision of the commission is subject to judicial review under IC 4-21.5-5 as if it was a decision of a state agency.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.7-1987, SEC.168; P.L.227-1997, SEC.3; P.L.158-2001, SEC.2; P.L.170-2002, SEC.157.

IC 36-7-11-4.3

Commission; authority to grant or deny certificate of appropriateness

Sec. 4.3. (a) An ordinance that establishes a historic preservation commission under section 4 of this chapter may authorize the staff of the commission, on behalf of the commission, to grant or deny an application for a certificate of appropriateness.

(b) An ordinance adopted under this section must specify the types of applications that the staff of the commission is authorized to grant or deny. The staff may not be authorized to grant or deny an application for a certificate of appropriateness for the following:

- (1) The demolition of a building.
- (2) The moving of a building.
- (3) The construction of an addition to a building.
- (4) The construction of a new building.

As added by P.L.227-1997, SEC.4.

IC 36-7-11-4.6

Commission; acquisition and disposition of property

Sec. 4.6. An ordinance that establishes a historic preservation commission under section 4 of this chapter may:

- (1) authorize the commission to:
 - (A) acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property, including easements, that is appropriate for carrying out the purposes of the commission;
 - (B) hold title to real and personal property; and
 - (C) sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the commission considers best; and
- (2) establish procedures that the commission must follow in acquiring and disposing of property.

As added by P.L.227-1997, SEC.5.

IC 36-7-11-5

Concern for visual quality in historic district

Sec. 5. The commission shall be concerned with those elements of development, redevelopment, rehabilitation, and preservation that affect visual quality in the historic district. However, the commission may not consider details of design, interior arrangements, or building features if those details, arrangements, or features are not subject to public view, and may not make any requirement except for the purpose of preventing development, alteration, or demolition in the historic district obviously incongruous with the historic district. A commission established by a county may not take any action that affects property

located in a municipality.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.6.

IC 36-7-11-6

Maps of historic districts; classification of historic buildings and structures

Sec. 6. (a) The commission shall conduct a survey to identify historic buildings, structures, and sites located within the unit. Based on its survey, the commission shall submit to the legislative body a map describing the boundaries of a historic district or historic districts. A district may be limited to the boundaries of a property containing a single building, structure, or site. The map may divide a district into primary and secondary areas.

(b) The commission shall also classify and designate on the map all buildings, structures, and sites within each historic district described on the map. Buildings, structures, and sites shall be classified as historic or nonhistoric in the manner set forth in subsections (c) and (e).

(c) Buildings, structures, and sites classified as historic under this section must possess identified historic or architectural merit of a degree warranting their preservation. They may be further classified as:

- (1) outstanding;
- (2) notable; or
- (3) contributing.

(d) In lieu of the further classifications set forth in subsection (c), the commission may devise its own system of further classification for historic buildings, structures, and sites.

(e) Nonhistoric buildings and structures are those not classified on the map as historic under subsection (b).

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.7.

IC 36-7-11-7

Approval of maps of historic districts

Sec. 7. The map setting forth the historic district boundaries and building classifications must be submitted to, and approved in an ordinance by, the legislative body of the unit before the historic district is established and the building classifications take effect.

As added by Acts 1981, P.L.309, SEC.30.

IC 36-7-11-8

Additional surveys and maps

Sec. 8. The commission may conduct additional surveys, and draw and submit additional maps for approval of the legislative body, as it considers appropriate.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.8.

IC 36-7-11-8.5

Interim protection

Sec. 8.5. (a) When submitting a map to the legislative body under section 7 or 8 of this chapter, the commission may declare one (1) or more buildings or structures that are classified and designated as historic on the map to be under interim protection.

(b) Not more than two (2) working days after declaring a building or structure to be under interim protection under this section, the commission shall, by personal delivery or first class mail, provide the owner or occupant of the building or structure with a written notice of the declaration. The written notice must:

- (1) cite the authority of the commission to put the building or structure under interim protection under this section;
- (2) explain the effect of putting the building or structure under interim protection; and
- (3) indicate that the interim protection is temporary.

(c) A building or structure put under interim protection under subsection (a) remains under interim protection until:

- (1) in a county other than a county described in subdivision (2), the map is:

- (A) submitted to; and
- (B) approved in an ordinance or rejected by;

the legislative body of the unit; or

- (2) in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000), the earlier of:

- (A) thirty (30) days after the building or structure is declared to be under interim protection; or
- (B) the date the map is:
 - (i) submitted to; and
 - (ii) approved in an ordinance or rejected by;the legislative body of the unit.

(d) While a building or structure is under interim protection under this section:

- (1) the building or structure may not be demolished or moved; and
- (2) the exterior appearance of the building or structure may not be conspicuously changed by:
 - (A) addition;
 - (B) reconstruction; or
 - (C) alteration.

As added by P.L.227-1997, SEC.9. Amended by P.L.158-2001, SEC.3.

IC 36-7-11-9

Assistance from unit officials; legal counsel

Sec. 9. (a) Each official of the unit who has responsibility for building inspection, building permits, planning, or zoning shall provide any technical, administrative, or clerical assistance requested by the commission.

(b) The attorney for the unit is the attorney for the commission. However, the commission may employ other legal counsel authorized to practice law in Indiana if it considers it to be necessary or desirable.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.146-1992,

SEC.1; P.L.227-1997, SEC.10.

IC 36-7-11-10

Construction projects within historic districts; certificates of appropriateness required; exception

Sec. 10. Except as provided in sections 19 and 20 of this chapter, a certificate of appropriateness must be issued by or on behalf of the commission before a permit is issued for or work is begun on any of the following:

- (1) Within all areas of the historic district:
 - (A) the demolition of any building;
 - (B) the moving of any building;
 - (C) a conspicuous change in the exterior appearance of historic buildings by additions, reconstruction, alteration, or maintenance involving exterior color change; or
 - (D) any new construction of a principal building or accessory building or structure subject to view from a public way.
- (2) Within a primary area of the historic district:
 - (A) a change in walls and fences or the construction of walls and fences along public ways; or
 - (B) a conspicuous change in the exterior appearance of nonhistoric buildings subject to view from a public way by additions, reconstruction, alteration, or maintenance involving exterior color change.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.146-1992, SEC.2; P.L.227-1997, SEC.11.

IC 36-7-11-11

Applications for certificates of appropriateness

Sec. 11. Application for a certificate of appropriateness may be made in the office of the commission on forms provided by that office. Detailed drawings, plans, or specifications are not required. However, to the extent reasonably required for the commission to make a decision, each application must be accompanied by sketches, drawings, photographs, descriptions, or other information showing the proposed exterior alterations, additions, changes, or new construction.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.12.

IC 36-7-11-12

Approval or denial of application for certificates of appropriateness

Sec. 12. (a) The commission may advise and make recommendations to the applicant before acting on an application for a certificate of appropriateness.

(b) If an application for a certificate of appropriateness:

- (1) is approved by the commission; or
- (2) is not acted on by the commission;

within thirty (30) days after it is filed, a certificate of appropriateness shall be issued. If the certificate is issued, the application shall be processed in the same manner as applications for building or

demolition permits required by the unit, if any, are processed. If no building or demolition permits are required by the unit, the applicant may proceed with the work authorized by the certificate.

(c) If the commission denies an application for a certificate of appropriateness within thirty (30) days after it is filed, the certificate may not be issued. The commission must state its reasons for the denial in writing, and must advise the applicant. An application that has been denied may not be processed as an application for a building or demolition permit and does not authorize any work by the applicant.

(d) The commission may grant an extension of the thirty (30) day limit prescribed by subsections (b) and (c) if the applicant agrees to it. *As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.13.*

IC 36-7-11-13

Reconstruction, alteration, maintenance, and removal of historic buildings and structures; preservation of historic character

Sec. 13. (a) A historic building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.

(b) A historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with subsection (a).

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.14.

IC 36-7-11-14

Demolition of buildings following failure to secure certificates of appropriateness; notice

Sec. 14. (a) The purpose of this section is to preserve historic buildings that are important to the education, culture, traditions, and economic values of the unit, and to afford the unit, historical organizations, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings.

(b) If a property owner shows that a historic building is incapable of earning an economic return on its value, as appraised by a qualified real estate appraiser, and the commission fails to approve the issuance of a certificate of appropriateness, the building may be demolished. However, before a demolition permit is issued or demolition proceeds, notice of proposed demolition must be given for a period fixed by the commission, based on the commission's classification on the approved map but not less than sixty (60) days nor more than one (1) year. Notice must be posted on the premises of the building proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three (3) times before demolition, with the first publication not more than fifteen (15) days after the application for a permit to demolish is filed, and the final publication at least fifteen (15) days before the date of the permit.

(c) The commission may approve a certificate of appropriateness at any time during the notice period under subsection (b). If the certificate is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.15.

IC 36-7-11-15

Conformance to statutory requirements for buildings

Sec. 15. Historic buildings shall be maintained to meet the applicable requirements established under statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.227-1997, SEC.16.

IC 36-7-11-16

New buildings and nonhistoric buildings within historic districts; compatibility required; exception

Sec. 16. Except as provided in section 20 of this chapter, the construction of a new building or structure, and the moving, reconstruction, alteration, major maintenance, or repair involving a color change conspicuously affecting the external appearance of any nonhistoric building, structure, or appurtenance within the primary area must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district, particularly with buildings designated as historic, and with squares and places to which it is visually related.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.146-1992, SEC.3.

IC 36-7-11-17

Compatibility factors; exception

Sec. 17. Except as provided in section 20 of this chapter, within the primary area of the historic district, new buildings and structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings, squares, and places to which they are visually related generally in terms of the following visual compatibility factors:

- (1) Height. The height of proposed buildings must be visually compatible with adjacent buildings.
- (2) Proportion of building's front facade. The relationship of the width of a building to the height of the front elevation must be visually compatible to buildings, squares, and places to which it is visually related.
- (3) Proportion of openings within the facility. The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.

(4) Rhythm of solids to voids in front facades. The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.

(5) Rhythm of spacing of buildings on streets. The relationship of a building to the open space between it and adjoining buildings must be visually compatible to the buildings, squares, and places to which it is visually related.

(6) Rhythm of entrances and porch projections. The relationship of entrances and porch projections to sidewalks of a building must be visually compatible to the buildings, squares, and places to which it is visually related.

(7) Relationship of materials, texture, and color. The relationship of the materials, texture, and color of the facade of a building must be visually compatible with the predominant materials used in the buildings to which it is visually related.

(8) Roof shapes. The roof shape of a building must be visually compatible with the buildings to which it is visually related.

(9) Walls of continuity. Appurtenances of a building, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street if necessary to ensure visual compatibility of the building to the buildings, squares, and places to which it is visually related.

(10) Scale of a building. The size of a building and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings, squares, and places to which it is visually related.

(11) Directional expression of front elevation. A building must be visually compatible with the buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or nondirectional character.

As added by Acts 1981, P.L.309, SEC.30. Amended by P.L.146-1992, SEC.4.

IC 36-7-11-18

Ordinances; penalties for violations

Sec. 18. Ordinances adopted under this chapter may provide for penalties for violations, subject to IC 36-1-3-8.

As added by Acts 1981, P.L.310, SEC.71.

IC 36-7-11-19

Phases; certificate of appropriateness; objections

Sec. 19. (a) In an ordinance approving the establishment of a historic district, a unit may provide that the establishment occur in two (2) phases. Under the first phase, which lasts three (3) years from the date the ordinance is adopted, a certificate of appropriateness is required only for the activities described in section 10(1)(A), 10(1)(B), and 10(1)(D) of this chapter. At the end of the first phase, the district becomes fully established, and, subject to subsection (b), a certificate

of appropriateness must be issued by the commission before a permit may be issued for or work may begin on an activity described in section 10 of this chapter.

(b) The first phase described in subsection (a) continues and the second phase does not become effective if a majority of the property owners in the district object to the commission, in writing, to the requirement that certificates of appropriateness be issued for the activities described in section 10(1)(C), 10(2)(A), and 10(2)(B) of this chapter. The objections must be received by the commission not earlier than one hundred eighty (180) days or later than sixty (60) days before the third anniversary of the adoption of the ordinance.

As added by P.L.146-1992, SEC.5. Amended by P.L.227-1997, SEC.17.

IC 36-7-11-20

Changes in paint colors; exclusion from activities requiring certificate of appropriateness

Sec. 20. In an ordinance approving the establishment of a historic district, a unit may exclude changes in paint colors from the activities requiring the issuance of a certificate of appropriateness under section 10 of this chapter before a permit may be issued or work begun.

As added by P.L.146-1992, SEC.6.

IC 36-7-11-21

"Interested party" defined; private rights of action; allegations; bond; liability; attorney's fees and costs; revenue; other remedies

Sec. 21. (a) As used in this section, "interested party" means one (1) of the following:

- (1) The executive of the unit.
- (2) The legislative body of the unit.
- (3) The agency having land use planning jurisdiction over a historic district designated by the ordinance adopted under this chapter.
- (4) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by an ordinance adopted under this chapter.
- (5) An owner or occupant owning or occupying property located in a historic district established by an ordinance adopted under this chapter.
- (6) Historic Landmarks Foundation of Indiana, Inc., or any of its successors.
- (7) The state historic preservation officer designated under IC 14-21-1-19.

(b) Every interested party has a private right of action to enforce and prevent violation of a provision of this chapter or an ordinance adopted by a unit under this chapter, and with respect to any building, structure, or site within a historic district, has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this chapter or an ordinance adopted by a unit under this chapter.

(c) The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.

(d) The interested party bringing an action under this section does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.

(e) The interested party that brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this chapter, or an ordinance adopted by a unit under this chapter, had been, or was about to be violated or breached.

(f) An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorney's fees and court costs from the person against whom judgment was rendered.

(g) An action arising under this section must be brought in the circuit or superior court of the county in which the historic district lies and no change of venue from the county shall be allowed in the action.

(h) The remedy provided in this section is in addition to other remedies that may be available at law or in equity.

As added by P.L.146-1992, SEC.7. Amended by P.L.1-1995, SEC.81.

IC 36-7-11-22

Removal of classifications in St. Joseph County

Sec. 22. (a) This section applies only to a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

(b) Notwithstanding any other provision, in the case of a building or structure owned by a political subdivision that is classified by a commission as historic and for which the classification is approved by the legislative body of the unit that established the commission, the commission may remove the historic classification of the building or structure without the adoption of an ordinance by the legislative body of the unit if the commission determines that removal of the classification is in the best interest of the unit and the political subdivision.

As added by P.L.158-2001, SEC.4.